

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

Electronic Investigation Of The Service, Rates And     )  
Facilities Of Kentucky Power Company                    )     Case No. 2021-00370

Notice of Filing Of Ten-Day Status Update

Kentucky Power Company gives notice, in accordance with ordering paragraph 7 of the Commission's September 27, 2021 Order, of its filing as part of this notice of its March 16, 2022 supplemental response to KPSC\_RH\_1\_1 (ten-day update) in Case No. 2021-00004.

Also filed with the notice of filing are two attachments to the March 16, 2022 ten-day update.

Respectfully submitted,



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COUNSEL FOR  
KENTUCKY POWER COMPANY

Kentucky Power Company  
KPSC Case No. 2021-00004  
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**DATA REQUEST**

**RH\_1\_1** Explain Kentucky Power and Wheeling Power's plan regarding Mitchell. Provide updated status reports every ten days through the pendency of this proceeding.

**RESPONSE**

Kentucky Power and Wheeling Power currently are implementing plans to ensure the construction of the CCR project to allow the operation of the Mitchell Generating Station through December 31, 2028.

Kentucky Power Company and Wheeling Power Company are reviewing their alternatives regarding the Mitchell Generating Station in light of the July 15, 2021 decision of this Commission, and the August 4, 2021 decision of the Public Service Commission of West Virginia. No decision regarding a plan for the Mitchell Generating Station beyond that described above has been reached by either Company.

Kentucky Power will file updated status reports every ten days during the pendency of this proceeding.

**September 13, 2021 Update**

Wheeling Power Company and Appalachian Power Company on September 8, 2021 filed with the Public Service Commission of West Virginia their "Petition to Reopen Case and to Take Further Action" in Case No. 20-1040-E-CN. The petition requests the West Virginia Commission to provide certain confirmations, acknowledgements, and commitments regarding, *inter alia*, the Mitchell Generating Station, in light of the inconsistent orders of the Kentucky and West Virginia commissions regarding the proposed ELG work at the Mitchell Generating Station. The petition further requests that the West Virginia Commission provide the confirmations, acknowledgements, and commitments prior to the October 13, 2021 deadline under the ELG Rule for notifying the West Virginia Department of Environmental Protection concerning the ELG modifications at the Mitchell Generating Station. Finally, Wheeling Power and Appalachian Power Company indicated in the petition that there were matters in need of resolution should West Virginia decide to fully fund the ELG investment and maintain the plant in order to preserve an option to run the Mitchell Generating Station past 2028.

A copy of the petition is attached as KPCO\_SR\_KPSC\_RH\_1\_1\_Attachment1.

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The West Virginia commission by order dated September 9, 2021 established a procedural schedule, and provided for a September 24, 2021 evidentiary hearing, in connection with the petition.

A copy of the September 9, 2021 order is attached as KPCO\_SR\_KPSC\_RH\_1\_1\_Attachment2.

Kentucky Power Company and Wheeling Power Company continue to review their alternatives regarding the Mitchell Generating Station pending action by the West Virginia Commission on the petition. Kentucky Power Company also intends to explore these issues and will work to bring the Commission a recommendation on how to handle the Mitchell operating agreement in a new docket for review.

Kentucky Power will continue to file updated status reports every ten days during the pendency of this proceeding on the status of the West Virginia decision on ELG investment.

**September 23, 2021 Update**

Wheeling Power Company and Appalachian Power Company on September 20, 2021 filed with the Public Service Commission of West Virginia their Reply in support of their "Petition to Reopen Case and to Take Further Action."

A copy of the Reply is attached as KPCO\_SR\_KPSC\_RH\_1\_1\_Attachment3.

Kentucky Power Company and Wheeling Power Company continue to review their alternatives regarding the Mitchell Generating Station pending action by the West Virginia Commission on the petition. Kentucky Power Company will work to bring the Commission a recommendation on how to handle the Mitchell operating agreement either in Case No. 2021-00370 or in a separate docket.

Kentucky Power will continue to file updated status reports every ten days during the pendency of this proceeding.

**October 4, 2021 Update**

The Public Service Commission of West Virginia held an evidentiary hearing on September 24, 2021 in Case No. 20-1040-E-CN. The purpose of the hearing was to address the issues raised in Wheeling Power Company and Appalachian Power Company's September 8, 2021 "Petition to Reopen Case and to Take Further Action."

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Kentucky Power Company and Wheeling Power Company continue to review their alternatives regarding the Mitchell Generating Station pending action by the West Virginia Commission on the petition. Kentucky Power Company will work to bring the Commission a recommendation on how to handle the Mitchell operating agreement either in Case No. 2021-00370 or in a separate docket.

Kentucky Power will continue to file updated status reports every ten days during the pendency of this proceeding.

**October 13, 2021 Update**

On October 12, 2021 the Public Service Commission of West Virginia issued its Order regarding Wheeling Power Company and Appalachian Power Company's September 20, 2021 "Petition to Reopen Case and to Take Further Action" affirming the earlier order that the Companies proceed with ELG at all three plants.

Please see KPCO\_SR\_KPSC\_RH\_1\_1\_Attachment4 which provides a copy of the October 12, 2021 Order and all other documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN since October 2, 2021<sup>1</sup> through October 12, 2021.

Kentucky Power will continue to file updated status reports every ten days during the pendency of this proceeding.

**October 25, 2021 Update**

Wheeling Power Company is moving forward with CCR/ELG work at the Mitchell Generating Station given the recent action by the West Virginia Commission on the petition. Kentucky Power Company will work to bring the Commission a recommendation on how to handle the Mitchell operating agreement either in Case No. 2021-00370 or in a separate docket. The Company expects to make the operating agreement filing in fourth quarter 2021 and further plans to address through that filing that Kentucky Power will only pay for CCR-related costs associated with the CCR/ELG project.

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<sup>1</sup> The Commission Staff's data request 2-6 dated September 17, 2021 sought, as a continuing request, that the Company provide a copy of any documents filed by Wheeling Power or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN and to be provided in the Company's 10-day status reports. The Company's response to 2-6 provided these documents through October 1, 2021.

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Kentucky Power will continue to file updated status reports every ten days during the pendency of this proceeding.

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN from October 13, 2021 through October 24, 2021.

**November 4, 2021 Update**

AEP has entered into an agreement to sell its Kentucky operations, which include Kentucky Power and AEP Kentucky Transco, to Liberty Utilities Corp., the regulated utility business of parent company Algonquin Power & Utilities Corporation. Liberty will own and obtain power from Kentucky Power's 50% portion of the Mitchell Plant through 2028. The sale is expected to close in the second quarter of 2022, pending regulatory approvals. The Company expects that an application for Commission approval of the transaction will be made in the fourth quarter 2021.

Kentucky Power Company will work to bring the Commission a recommendation on how to handle the Mitchell operating agreement either in Case No. 2021-00370 or in a separate docket. The Company expects to make the operating agreement filing in the fourth quarter 2021.

Kentucky Power will continue to file updated status reports every ten days during the pendency of this proceeding.

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN from October 25, 2021 through November 3, 2021.

**November 15, 2021 Update**

On November 5, 2021, Kentucky Power filed its notice of intent to file an application for approval of affiliate agreements related to the Mitchell Generating Station. The Commission assigned this proceeding Case No. 2021-00421. The Company will file its application before November 30, 2021. A comparable filing will be made at the same time in West Virginia.

Kentucky Power will continue to file updated status reports every ten days during the pendency of this proceeding.

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There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN from November 4, 2021 through November 14, 2021.

**November 24, 2021 Update**

On November 19, 2021, Kentucky Power filed its application for approval of its proposed Mitchell Plant Operations and Maintenance Agreement and Mitchell Plant Ownership Agreement (collectively the “New Mitchell Agreements”) in Case No. 2021-00421. Please see KPCO\_SR\_KPSC\_1\_1\_Attachment5 for a copy of the Company’s application, including the supporting testimonies of D. Brett Mattison and Timothy C. Kerns. A comparable filing was made contemporaneously in West Virginia under Case No. 21-0810-E-PC. Please see KPCO\_SR\_KPSC\_1\_1\_Attachment6 for a copy of this filing.

Additionally, American Electric Power Service Corporation (on behalf of Wheeling Power and Kentucky Power) filed the New Mitchell Agreements and cancellation of Rate Schedules No. 303 (current Mitchell Plant Operating Agreement) with FERC on November 19, 2021. Please see KPCO\_SR\_KPSC\_1\_1\_Attachment7 for a copy of this filing.

Kentucky Power will continue to file updated status reports every ten days during the pendency of this proceeding.

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN from November 15, 2021 through November 23, 2021.

**December 3, 2021 Update**

On November 30, 2021 an informal meeting was held following the hearing in Case No. 2021-00370 to discuss a procedural schedule for Case No. 2021-00421. The Commission entered an Order on December 3, 2021 in Case No. 2021-00421 establishing the procedural schedule for Case No. 2021-00421.

As of December 2, 2021 a procedural schedule has not been established in the comparable filing made in West Virginia (21-0810-E-PC).

Copies of the FERC eLibrary docket for FERC Case No. ER22-453-000 (Kentucky Power Company) and FERC Case No. ER22-452-000 (Wheeling Power Company) are filed as KPCO\_SR\_KPSC\_1\_1\_Attachment8 and KPCO\_SR\_KPSC\_1\_1\_Attachment9 respectively.

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Kentucky Power will continue to file updated status reports every ten days during the pendency of this proceeding.

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN during the period November 24, 2021 through December 2, 2021.

**December 13, 2021 Update**

On December 13, 2021, the Commission established a hearing date in Case No. 2021-00421. The hearing is to be held on March 1, 2022 through March 3, 2022.

As of December 12, 2021 a procedural schedule has not been established in the comparable filing made in West Virginia (21-0810-E-PC).

Copies of the FERC eLibrary docket for FERC Case No. ER22-453-000 (Kentucky Power Company) and FERC Case No. ER22-452-000 (Wheeling Power Company) are filed as KPCO\_SR\_KPSC\_1\_1\_Attachment10 and KPCO\_SR\_KPSC\_1\_1\_Attachment11 respectively.

Kentucky Power will continue to file updated status reports every ten days during the pendency of this proceeding.

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN during the period December 3, 2021 through December 12, 2021.

**December 22, 2021 Update**

The Company will be filing its responses to the first set of discovery requests in Case No. 2021-00421 today.

As of December 21, 2021 a procedural schedule has not been established in the comparable filing made in West Virginia (21-0810-E-PC).

Copies of the FERC eLibrary docket for FERC Case No. ER22-453-000 (Kentucky Power Company) and FERC Case No. ER22-452-000 (Wheeling Power Company) are filed as KPCO\_SR\_KPSC\_1\_1\_Attachment12 and KPCO\_SR\_KPSC\_1\_1\_Attachment13 respectively.

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Kentucky Power will continue to file updated status reports every ten days during the pendency of this proceeding.

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN during the period December 13, 2021 through December 21, 2021.

**January 3, 2022**

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN during the period December 22, 2021 through December 31, 2021.

On December 22, 2021 the Staff of the Public Service Commission of West Virginia issued its initial memorandum and first set of data requests in Case No. 21-0810-E-PC. The proceeding seeks approval of the Mitchell Plant Operations and Maintenance Agreement and the Mitchell Plant Ownership Agreement. Copies of the filed memo and the data requests are attached as KPCO\_SR\_KPSC\_1\_1\_Attachment14 and KPCO\_SR\_KPSC\_1\_1\_Attachment15 respectively. As of December 29, 2021 a procedural schedule has not be established in Case 21-0810-E-PC.

Copies of the FERC eLibrary docket for FERC Case No. ER22-453-000 (Kentucky Power Company) and FERC Case No. ER22-452-000 (Wheeling Power Company) are filed as KPCO\_SR\_KPSC\_1\_1\_Attachment16 and KPCO\_SR\_KPSC\_1\_1\_Attachment17 respectively.

**January 13, 2022**

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN during the period January 1, 2022 through January 12, 2022.

Responses to the Staff of the Public Service Commission of West Virginia's first set of data requests in Case No. 21-0810-E-PC were filed on January 11, 2022. A copy of these responses is attached as KPCO\_SR\_KPSC\_1\_1\_Attachment18. As of December 29, 2021 a procedural schedule has not be established in Case 21-0810-E-PC.

Copies of the FERC eLibrary docket for FERC Case No. ER22-453-000 (Kentucky Power Company) and FERC Case No. ER22-452-000 (Wheeling Power Company) are filed as KPCO\_SR\_KPSC\_1\_1\_Attachment19 and KPCO\_SR\_KPSC\_1\_1\_Attachment20 respectively.



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**January 24, 2022**

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN during the period January 13, 2022 through January 23, 2022.

A proposed procedural schedule was filed by West Virginia Staff in Case No. 21-0810-E-PC on January 14, 2022. On January 20, 2022 the "Objections of Appalachian Power Company and Wheeling Power Company to the Consumer Advocate Division's First Request for Information" were filed. A copy of these documents are attached as KPCO\_SR\_KPSC\_1\_1\_Attachment21 and KPCO\_SR\_KPSC\_1\_1\_Attachment22.

Copies of the FERC eLibrary docket for FERC Case No. ER22-453-000 (Kentucky Power Company) and FERC Case No. ER22-452-000 (Wheeling Power Company) beginning November 24, 2021 are filed as KPCO\_SR\_KPSC\_1\_1\_Attachment23 and KPCO\_SR\_KPSC\_1\_1\_Attachment24 respectively.

**February 3, 2022**

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN during the period January 24, 2022 through February 2, 2022.

The West Virginia Commission's procedural order in Case No. 21-0810-E-PC was entered on January 25, 2022. Appalachian Power Company's and Wheeling Power Company's responses to the Consumer Advocate Division and the West Virginia Energy Users Group first data requests were filed on January 26, 2022. A copy of these documents are attached as KPCO\_SR\_KPSC\_1\_1\_Attachment25 through KPCO\_SR\_KPSC\_1\_1\_Attachment27.

Copies of the FERC eLibrary docket for FERC Case No. ER22-453-000 (Kentucky Power Company) and FERC Case No. ER22-452-000 (Wheeling Power Company) beginning December 4, 2021 are filed as KPCO\_SR\_KPSC\_1\_1\_Attachment28 and KPCO\_SR\_KPSC\_1\_1\_Attachment29 respectively.

Kentucky Power Company  
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**February 14, 2022**

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN during the period February 3, 2022 through February 13, 2022.

In Case No. 21-0810-E-PC, Appalachian Power Company's and Wheeling Power Company's response to the Consumer Advocate Division's motion to compel was filed on February 7, 2022. On February 8, 2022 the West Virginia Commission granted intervention two petitions to intervene: 1) West Virginia Coal Association and 2) West Virginia Citizens Action Group, Solar United Neighbors, and Energy Efficient West Virginia. A copy of these documents are attached as KPCO\_SR\_KPSC\_1\_1\_Attachment30 through KPCO\_SR\_KPSC\_1\_1\_Attachment31.

On February 7, 2022 American Electric Power Service Corporation on behalf of Kentucky Power and Wheeling Power Company filed a motion to withdraw the rate filing submitted on November 19, 2021 in dockets ER22-452-000 and ER22-453-000.

**February 24, 2022**

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN or Case No. 21-0810-E-PC during the period February 14, 2022 through February 23, 2022.

**March 7, 2022**

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN during the period February 24, 2022 through March 6, 2022.

The Company inadvertently omitted from its last 10-day status update that in Case No. 21-0810-E-PC, Appalachian Power Company's and Wheeling Power Company's responses to West Virginia Energy Users Group second set of data requests were filed on February 23, 2022. A copy of these responses is attached as KPCO\_SR\_KPSC\_1\_1\_Attachment32.

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The Commission held a hearing in Case No. 2021-00421 on March 1, 2022. After that hearing, the Kentucky Public Service Commission issued an order requiring the Company to notify the Commission whether or not the Company intended to file a proposed amendment to the Mitchell Ownership Agreement concerning the Company's alternate proposal to divide the Mitchell units between Kentucky Power and Wheeling Power. The Company is evaluating this option and will file its response regarding such a proposal as soon as is practical before March 16, 2022.

**March 16, 2022**

There were no documents filed by either Wheeling Power Company or the Public Service Commission of West Virginia in Case No. 20-1040-E-CN during the period March 7, 2022 through March 15, 2022.

In Case No. 21-0810-E-PC, on March 8, 2022 the West Virginia Commission granted two requests for admission Pro Hac Vice of West Virginia Citizens Action Group, Solar United Neighbors and Energy Efficient West Virginia. On March 9, 2022, Appalachian Power Company and Wheeling Power Company filed a response to the third set of data requests from West Virginia Energy Users Group. A copy of the response is attached as KPCO\_SR\_KPSC\_1\_1\_Attachment33. On March 11, 2022 the West Virginia Commission granted the Consumer Advocate Division's (CAD) Motion to Compel. A copy of the Order is attached as KPCO\_SR\_KPSC\_Attachment34.

Witness: Deryle B. Mattison



An **AEP** Company

BOUNDLESS ENERGY

**Keith D. Fisher**  
Senior Counsel

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Charleston, WV 25301  
304.348.4154  
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March 9, 2022

Via Electronic Mail

Karen Buckley  
Acting Executive Secretary  
Public Service Commission of West Virginia  
201 Brooks St.  
Charleston, WV 25301

11:17 AM MAR 09 2022 EXEC SEC DIV

**Re: Case No. 21-0810-E-PC**  
**Appalachian Power Company and Wheeling Power Company**  
*Petition for Commission Consent and Approval to Enter into Ownership and Operating Agreements for the Mitchell Plant*

Dear Ms. Buckley:

Please find enclosed for filing in the above-referenced matter the Responses of Appalachian Power Company and Wheeling Power Company to WVEUG's Third Data Request. On this date, copies thereof were served in accordance with the Certificate of Service.

This filing is made via electronic mail in accordance with the Commission's General Order No. 262.3 *Regarding Processing of Cases During COVID-19 West Virginia State of Emergency*.

Thank you for your attention to this matter. Should you have any questions regarding this correspondence, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith D. Fisher".

Keith D. Fisher (WV State Bar #11346)  
*Counsel for Appalachian Power Company  
and Wheeling Power Company*

Enclosure

cc: Certificate of Service

11:17 AM MAR 09 2022 EXEC SEC DIV

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

**CASE NO. 21-0810-E-PC**

**APPALACHIAN POWER COMPANY and  
WHEELING POWER COMPANY,**  
public utilities.

*Petition for Commission Consent and Approval  
to Enter into Ownership and Operating Agreements  
for the Mitchell Plant*

**RESPONSES OF APPALACHIAN POWER COMPANY AND  
WHEELING POWER COMPANY TO WVEUG'S THIRD DATA REQUEST**

Appalachian Power Company ("APCo") and Wheeling Power Company ("WPCo") (together, "the Companies") file the following as their Responses to WVEUG's Third Data Request in the above-referenced matter:

**APPALACHIAN POWER COMPANY &  
WHEELING POWER COMPANY  
WEST VIRGINIA CASE NO. 21-0810-E-PC  
WVEUG Set 3**

Request WVEUG 3-01

Please identify the sponsoring witness for each subsequent response provided by the Companies.

Response WVEUG 3-01

1. Not applicable.
2. Chris Beam is a witness who could address the subject matter of this discovery request.

**APPALACHIAN POWER COMPANY &  
WHEELING POWER COMPANY  
WEST VIRGINIA CASE NO. 21-0810-E-PC  
WVEUG Set 3**

Request WVEUG 3-02

Reference Paragraph 32 of the Companies' Petition.

- a. Please confirm, and explain the underlying reasoning, that American Electric Power Service Corporation ("AEPSC") has withdrawn its Federal Energy Regulatory Commission ("FERC") requests to approve the operating agreement for the Mitchell plant.
- b. Please explain the impact that this withdrawal of the FERC requests will have on the timing of the Companies' request in this proceeding and the timing of the proposed revisions contemplated by the Companies' Petition.

Response WVEUG 3-02

- a. The Companies confirm that on February 7, 2022, AEPSC filed a request at FERC to withdraw the filings related to the new Mitchell agreements that were originally made on November 19, 2021. As noted in the FERC request to withdraw, the Mitchell agreements may require modifications based on orders from the Kentucky and West Virginia commissions and such amendments would then need to be filed with the FERC. In light of the on-going proceedings for the WVPSC and KPSC and in the interest of administrative efficiency, the Companies sought to withdraw the FERC filing. The Companies intend to re-file with FERC following orders from the WVPSC and KPSC.
- b. The withdrawal of the FERC requests has no impact on the Companies' request in this proceeding, as expeditious treatment is still needed. Orders from the WVPSC and KPSC will be obtained prior to re-filing at FERC, the approval from which may take up to 60 days after such a filing is made. Regulatory approvals from this Commission, the KPSC, and the FERC are all required.

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

**CASE NO. 21-0810-E-PC**

**APPALACHIAN POWER COMPANY and  
WHEELING POWER COMPANY,**  
public utilities.

*Petition for Commission Consent and Approval  
to Enter into Ownership and Operating Agreements  
for the Mitchell Plant*

**CERTIFICATE OF SERVICE**

I, Keith D. Fisher, counsel for Appalachian Power Company and Wheeling Power Company, do hereby certify that a true and correct copy of the foregoing "Responses of Appalachian Power Company and Wheeling Power Company to WVEUG's Third Data Request" was served upon the following, via electronic mail, on this 9th day of March, 2022:

Lucas R. Head, Esq. Public Service Commission of West Virginia 201 Brooks Street Charleston, WV 25301 <i>Counsel for Staff of WV Public Service Commission</i>	Robert F. Williams, Esq. Heather B. Osborn, Esq. John Auville, Esq. Consumer Advocate Division 300 Capitol Street, Suite 810 Charleston, WV 25301 <i>Counsel for Consumer Advocate Division</i>
Susan J. Riggs, Esq. Jason C. Pizatella, Esq. Spilman Thomas & Battle, PLLC 300 Kanawha Blvd E Charleston, WV 25301 <i>Counsel for WVEUG</i>	Derrick P. Williamson, Esq. Barry A. Naum, Esq. Spilman Thomas & Battle, PLLC 1100 Bent Creek Blvd, Suite 101 Mechanicsburg, PA 17050 <i>Counsel for WVEUG</i>
Emmett Pepper, Esq. Pepper & Nason 8 Hale Street Charleston, WV 25301 <i>Counsel for CAG, SUN, and EEVW</i>	H. Brann Altmeyer, Esq. Jacob C. Altmeyer, Esq. Phillips, Gardill, Kaiser & Altmeyer, PLLC 61 Fourteenth Street Wheeling, WV 26003 <i>Counsel for WV Coal Association, Inc.</i>



Keith D. Fisher (WV State Bar #11346)



**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 11<sup>th</sup> day of March 2022.

CASE NO. 21-0810-E-PC

APPALACHIAN POWER COMPANY and  
WHEELING POWER COMPANY,  
public utilities.

Petition for consent and approval to enter into Ownership and Operating Agreements for the Mitchell Plant.

**COMMISSION ORDER**

The Commission grants a motion to compel.

**BACKGROUND**

On November 19, 2021, Appalachian Power Company and Wheeling Power Company (together, Companies) filed a petition (Petition) for consent and approval to enter into Ownership and Operating Agreements for the Mitchell Plant that is the subject of this case (sometimes referred to as Mitchell). As a part of that Petition, the Companies requested exemption from the requirement to provide the financial information specified in Rule 21 of the Commission Rules of Practice and Procedure (Procedural Rules), 150 C.S.R. 1. Petition at 2.

The Commission granted intervenor status to the West Virginia Energy Users Group (WVEUG), the Consumer Advocate Division (CAD), the West Virginia Coal Association (WVCA) and West Virginia Citizens Action Group, Solar United Neighbors, and Energy Efficient West Virginia (CAG/SUN/EEWV). Commission Orders, January 25, 2022, and February 8, 2022.

On January 27, 2022, CAD filed a motion requesting that the Commission compel the Companies to respond to CAD Data Requests Set I, requests 1-4 and 1-5 (Motion).

On February 7, 2022, the Companies responded to CAD's Motion (Response).

**DISCUSSION**

CAD requested the following information from the Companies in discovery

requests:

1-4 Please produce the Confidential Information Memorandum or its equivalent put forward by Barclays, Goldman Sachs Co., and/or others who served as AEP's financial and strategic advisors related to the sale of Kentucky Power.

1-5 Please produce all information provided to AEP by Algonquin Power & Utilities Corporation subsidiary Liberty Utilities Company or others related to Liberty's plans for Kentucky Power and Mitchell if it were successful in the acquisition, including any conditions related to Mitchell included in its offer.

Requests, Set 1 (January 6, 2022).

The Companies objected to these two discovery requests:

5. The Companies object to Question No. 1-4 on grounds of relevance. The Companies' Petition in this matter seeks the Commission's approval of new Ownership and Operating Agreements whereby WPCo would replace Kentucky Power Company ("KPCo") as operator of the Mitchell Plant. As explained in that Petition, and regardless of the proposed sale of KPCo to Liberty Utilities Co., it is necessary for WPCo to become operator of the Mitchell Plant due to the conflicting decisions of this Commission and the Kentucky Public Service Commission ("KPSC") as to CCR/ELG upgrades at the plant. CAD Question No. 1-4 seeks only information related to the proposed sale of KPCo, which is the subject of a proceeding pending not before this Commission, but before the KPSC (*see* Case No. 2021-00481). Accordingly, this question is not reasonably calculated to lead to the discovery of relevant, admissible evidence in this proceeding.

7. The Companies object to Question No. 1-5 on the grounds that the term "all information" is vague, ambiguous, and overbroad and, further, to the extent the question seeks information that is confidential, privileged, and/or not likely to lead to the discovery of relevant, admissible evidence in this proceeding. As the Companies noted in their objection to Question No. 1-4, the proposed sale of KPCo to Liberty is the subject of a separate proceeding before a different commission (*see* KPSC Case No. 2021-00481).

Companies Objections (January 20, 2022).

Without waiving their objection, the Companies responded:

The SPA [Sale and Purchase Agreement] between AEP and Liberty Utilities (see response to CAD 1-03) and the new Mitchell Ownership Agreement and Mitchell O&M Agreement reflect the plans for both parties, including Liberty's plans for Mitchell. Specifically, the SPA states that:

- Kentucky Power and Wheeling Power will take the actions necessary to obtain the regulatory approvals of the Mitchell Ownership Agreement and Mitchell O&M Agreement;
- The new Mitchell Ownership Agreement and Mitchell O&M Agreement must receive all regulatory approvals and be signed by Kentucky Power and Wheeling Power as necessary conditions to closing the sale of Kentucky Power; and
- The new Mitchell Ownership Agreement and Mitchell O&M Agreement are exhibits to the SPA and contain what AEP and Liberty have agreed to regarding Mitchell including operations and cost allocations.

Response to Discovery Request CAD 1-05 (January 26, 2022).

CAD in its Motion to Compel amended Request 1.5 and is requesting only the parties' written offers and counter offers with respect to the anticipated transfer of KPCo to Liberty.

CAD argued that the approval of ownership and operating agreements at issue in this case and the potential purchase of KPCo by Liberty Utilities are inarguably intertwined. The responsibilities related to the future ownership and operation of the Mitchell Plant by Liberty Utilities, if it takes ownership of KPCo, are relevant to the case before this Commission. In KPSC Case No. 2021-00481, Peter Eichler testified that "Liberty's generation operations experts will monitor Mitchell's performance on behalf of Kentucky Power, and will be involved in all of the appropriate decision-making as contemplated in the Mitchell Plant Operations and Maintenance Agreement and Mitchell Plant Ownership Agreement." Direct Testimony of Peter Eichler at 31. Mr. Eichler continued to say "Mitchell nevertheless represents a major facet of the transaction. As such, a number of Liberty's staff members were involved in the review and development of different aspects of the proposed new Mitchell Agreements." *Id.* at 47. CAD argued that because the testimony in the Kentucky case discussed the future ownership and operation of Mitchell as a major facet of the sale of KPCo to Liberty Utilities, the two are intertwined. Additionally, "Liberty's generation operations experts will monitor Mitchell's performance on behalf of Kentucky Power, and will be involved in all the appropriate decision-making as contemplated in the Mitchell Operations and Maintenance Agreement and Mitchell Plant Ownership Agreement." KPSC Case No. 2021-0048, Direct Testimony of Peter Eichler at 31.

The Companies countered that WPCo must become the operator of the Mitchell Plant regardless of the proposed sale of KPCo to Liberty, as explained in the Companies' Petition and in the direct testimony of Christian T. Beam: therefore, the possible transfer of ownership of KPCo's undivided one-half interest in Mitchell is irrelevant. "The New Mitchell Agreements are appropriate to govern the relationship regarding the Mitchell Plant whether or not the ownership of the KPCo changes, as they address the requirements of this Commission and KPSC." Response at 4-5; Cos. Exh. CTB-D at 12. Additionally, the Companies argued that confidential communications between AEP and its financial and strategic advisors as well as "all information" provided to AEP by Liberty is not relevant to this case. CAD, however, argued that how the parties arrived at the terms of the SPA for KPCo is pertinent to this case.

Rule 13.6 of the Commission Rules of Practice and Procedure, 150 CSR 1, provides that discovery requests must be pertinent to substantial issues in the proceeding. The Commission considers Rule 26 of the W. Va. Rules of Civil Procedure when resolving or addressing discovery disputes. The Commission broadly interprets discovery and allows for discovery requests that appear reasonably calculated to lead to the discovery of admissible evidence. Trans-Allegheny Interstate Line Co., Case No. 07-0508-E-CN, Comm'n Order at 3 (May 23, 2008); Equitable Gas Co., Case No. 95-0704-G-30C, Comm'n Order at 1 (Jan. 3, 1996). The Commission agrees with CAD that the ownership and operating agreement in this case is intertwined with the potential future ownership of an undivided one-half interest in the Mitchell Plant by Liberty. Requests 1-4 and amended 1-5 are relevant and likely to lead to admissible evidence. The Commission, therefore, will grant the Motion. The Companies should answer Request 1.4 and amended Request 1.5 within five days of the date of this Order.

#### **FINDING OF FACT**

KPCo is currently before the KPSC requesting permission to sell its undivided one-half interest in the Mitchell Plant to Liberty. KPSC Case No. 2021-0048.

#### **CONCLUSIONS OF LAW**

1. The Commission broadly interprets discovery and allows for discovery requests that appear reasonably calculated to lead to the discovery of admissible evidence. Trans-Allegheny Interstate Line Co., Case No. 07-0508-E-CN, Comm'n Order at 3 (May 23, 2008); Equitable Gas Co., Case No. 95-0704-G-30C, Comm'n Order at 1 (Jan. 3, 1996).

2. The potential future ownership by Liberty of an undivided one-half interest in the Mitchell Plant is relevant to the ownership and operating agreement presented for Commission approval in this case. Request 1-4 and amended Request 1-5, therefore, are likely to lead to admissible evidence.

**ORDER**

IT IS THEREFORE ORDERED that the Motion to Compel filed by the Consumer Advocate Division is granted and the Companies should file their responses to Request 1.4 and modified Request 1.5 within five days of the date of this Order. If the information is deemed confidential by the Companies, then the Companies should file the information under seal and file a motion for protective treatment.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission serve a copy of this Order by electronic service on all parties of record who have filed an e-service agreement, by United States First Class Mail on all parties of record who have not filed an e-service agreement, and on Staff by hand delivery.

A True Copy, Teste,



Karen Buckley, Acting Executive Secretary

SMS/pb  
210810cb

VERIFICATION

The undersigned, Brett Mattison, being duly sworn, deposes and says he is President and COO of Kentucky Power Company, that he has personal knowledge of the matters set forth in the foregoing responses and the information contained therein is true and correct to the best of his information, knowledge, and belief after reasonable inquiry.

*Brett Mattison*

\_\_\_\_\_  
Brett Mattison

Commonwealth of Kentucky )  
  )  
County of Boyd )

Case No. 2021-00004

Subscribed and sworn before me, a Notary Public, by Brett Mattison this 15<sup>th</sup> day of March, 2022.

*Scott F. Bishop*  
\_\_\_\_\_  
Notary Public

My Commission Expires June 24, 2025

Notary ID Number: KYNP 32110

